



STATE OF CALIFORNIA

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March 12, 2007

***Re: Cooperative Housing Corporation – Revenue & Taxation Code § 65.1(b)***

Dear Mr.       :

This is in response to your letter dated September 28, 2006, addressed to the Board's Legal Division, requesting an opinion as to whether Revenue and Taxation Code<sup>1</sup> section 65.1, subdivision (b) applies when a cooperative housing corporation has not requested a separate assessment under section 2188.7. For the reasons set forth below, we conclude that section 65.1, subdivision (b) applies irrespective of whether a separate assessment has been requested under section 2188.7, and thus, any increase in property tax assessment resulting from a change in ownership of a particular unit may not be prorated among the shareholders who own all of the other units.

**Factual Background**

You have provided the following facts:

You represent a group of shareholders in a cooperative housing corporation in , California. The corporation was incorporated in 1955 and consists of 164 residential apartments. Each apartment owner (shareholder) owns one share of the common stock of the corporation and has the exclusive right to occupy and possess a particular unit.

The lease agreement requires that each shareholder pay a monthly carrying charge which includes a portion of the corporation's real property tax. The carrying charges are calculated using a percentage factor based upon the square footage, elevation, and ocean view of the apartments within the apartment building. Each shareholder is then assigned a percentage factor and pays accordingly. For example, a shareholder owning a two-bedroom apartment on the top floor with an ocean view would pay more carrying charges than a shareholder owning a one-

<sup>1</sup> Unless otherwise stated, all section references are to the Revenue and Taxation Code.

bedroom apartment on the bottom floor with no ocean view. The carrying charges are determined by the board of directors of the corporation.

Each year, the corporation receives a single real property tax bill. The shareholders pay their proportionate share of the property tax in accordance with their assigned percentage factor. The shareholders have not elected, under section 2188.7, to receive separate assessments.

In 2006, the County Assessor (Assessor) reassessed portions of the real property which changed ownership in 2002, 2003, 2004, and 2005, and issued escape assessments accordingly. As of 2006, approximately two-thirds of the shareholders purchased their units prior to 2002 and approximately one-third purchased their units in 2002 or thereafter.

### **Law & Analysis**

A "change in ownership" is defined as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. (Rev. & Tax. Code, § 60.) A change in ownership includes, but is not limited to, the transfer of stock of a cooperative housing corporation that conveys to the transferee the exclusive right to occupancy and possession of that property, or a portion thereof. (Rev. & Tax. Code, § 61, subd. (i).) Specifically, if a unit or lot within a cooperative housing corporation is purchased or changes ownership, then only the unit transferred is reappraised. (Rev. & Tax. Code, § 65.1, subd. (b).) Thus, whenever a unit is purchased or changes ownership, the assessor is required to reappraise the property and establish a new base year value only for that unit.

Revenue and Taxation Code section 65.1, subdivision (b) further provides:

Notwithstanding any other provision of law, the increase in property taxes resulting from such reappraisal shall be applied by the owner of such property to the tenant-shareholder, lessee, or occupant of such individual unit or lot only, and shall not be prorated among all other units or lots of such property.

Therefore, if the property tax increases as a result of the reappraisal, the corporation must apply the resulting tax increase to only the shareholder of such unit and cannot prorate it among the other shareholders. This statutory provision operates independently from section 2188.7.

Section 2188.7, subdivision (a) provides that:

Whenever the assessor receives a written request for separate assessment of a community apartment project, a stock cooperative, or a limited equity housing cooperative as defined in Section 11003.2, 11003.4, or 11004 of the Business and Professions Code, or any other similarly organized housing cooperative, the assessor shall, on the first lien date which occurs more than 60 days following the request, and on each lien date thereafter, separately assess the individual interests described in subdivision (b) held by the owners of the project or shareholders of the corporation if the conditions specified in subdivision (c) have been met.

Whenever a community apartment project or cooperative housing corporation is separately assessed, it shall continue to be separately assessed in subsequent fiscal years and once a request for separate assessment is made, it is binding on all future owners and occupants of the project or corporation.

Thus, if the shareholders request separate assessments under Section 2188.7, each unit would be separately assessed and each shareholder would receive a separate tax bill from the county.

In this case, the shareholders have not elected to receive a separate assessment under section 2188.7. However, subdivision (b) of section 65.1 requires the county assessor to reappraise each unit upon a change in ownership, irrespective of whether the shareholders have elected to receive a separate tax bill. Thus, if there is an increase of the property tax as a result of a reappraisal, section 65.1, subdivision (b) mandates that the corporation allocate the tax liability to only the shareholder of that unit and does not allow the corporation to prorate the liability among the other shareholders. In effect, section 65.1, subdivision (b) requires the corporation to allocate any tax increases resulting from a change in ownership to only the shareholder that owns the unit at the time in question. Therefore, the corporation cannot allocate the tax amongst the remaining shareholders.

The views expressed in this letter are only advisory in nature. They represent the analysis of the legal staff of the Board of Equalization based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

*/s/ Mariam Baxley*

Mariam Baxley  
Tax Counsel

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cc: Honorable  
County Assessor

Mr. David Gau	MIC:63
Mr. Dean Kinnee	MIC:64
Mr. Todd Gilman	MIC:70